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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FACETIME COMMUNICATIONS, INC.,

Plaintiff,

v.

REUTERS LIMITED,

Defendant.

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Civil Action No. 08-4730 (CM)

**LOCAL RULE 56.1 STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF PLAINTIFF FACETIME'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1, Plaintiff FaceTime Communications, Inc. ("FaceTime") hereby submits the following Statement of Undisputed Material Facts in support of its motion for summary judgment.

1. FaceTime and Defendant Reuters Limited entered into a Source Code Licensing Agreement dated January 31, 2006 (the "Agreement"). *See Declaration of Kailash Ambwani, dated June 16, 2008 ("Ambwani Decl."), Ex. A.*

2. The Agreement provided Reuters with a non-exclusive license to use certain FaceTime source code and other "Licensed Materials." *Id.*, Ex. A § 2.3.

3. The term of the Agreement was for a period of two years, beginning on January 31, 2006 and ending on January 31, 2008. *Id.*, Ex. A § 8.1

4. The Agreement provided Reuters with an irrevocable option to purchase a perpetual, non-exclusive license to use the FaceTime source code and the "Licensed Materials" for a one-time payment of \$150,000. *Id.*, Ex. A § 6.2.

5. Under Section 6.2 of the Agreement, Reuters was required to exercise its option and make the \$150,000 payment to FaceTime by January 31, 2008. *Id.*

6. Section 6.2 further stated that if Reuters elected not to exercise its option or failed to make the \$150,000 payment by the January 31 deadline, "Reuters license to use the Licensed Materials shall terminate on such date." *Id.*

7. Reuters did not exercise its option or make a \$150,000 payment to FaceTime to purchase a perpetual license by the January 31, 2008 deadline. *See Declaration of Scott Case, dated June 16, 2008 ("Case Decl."), ¶¶ 3-4; Declaration of Deric Moilliet, dated June 16, 2008, ¶ 2.*

8. On February 13, 2008, FaceTime's General Counsel, Jim Obrien, sent a letter to Reuters to memorialize the fact that the Agreement had expired on January 31, 2008. *See Declaration of Jim Obrien, dated June 16, 2008 ("Obrien Decl."), Ex. A.*

9. The February 13 letter also reminded Reuters that under Section 8.4.2 of the Agreement, Reuters could continue using FaceTime's source code and the other "Licensed Materials" defined in the Agreement for a six-month "exit period." *Id.*

10. On February 15, Reuters wired \$150,000 to FaceTime. *Case Decl. ¶ 3.*

11. On February 19, Chris Lamb (Reuters' Senior Vice President of Strategic Alliances) sent an e-mail to FaceTime's accounts receivable department. The e-mail stated in full: "Last Friday we wired \$150,000 USD to Facetime [sic] as the final payment for our

agreement with you with an effective date of 31 January 2006. Please confirm that you have received and accepted these funds." *Case Decl.*, Ex. A.

12. On February 20, FaceTime's Chief Financial Officer, Scott Case, sent a response e-mail to Mr. Lamb, which stated that FaceTime's "agreement with Reuters terminated January 31, 2008. Payment was required by that date to meet the terms of that expired agreement." *Id.*, Ex. A. Mr. Case further stated in his e-mail that FaceTime was returning the \$150,000 to Reuters, less \$65,453.50 for certain payments that remained outstanding to FaceTime. Accordingly, \$84,546.50 was thereafter wired back to Reuters. *Id.*

13. Reuters has since taken the position that its late exercise of its option will be upheld under New York law, and thus it has a legal right to retain its license to use FaceTime's source code and the "Licensed Materials" in perpetuity. *See Obrien Decl.*, ¶¶ 10-11.

Respectfully submitted,

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